

## SUMMARY OF WATER QUALITY ORDER

<b>ORDER NO.</b>	WQ 2009-0010
<b>DATE ADOPTED</b>	September 15, 2009
<b>PETITION TITLE</b>	In the Matter of the Petition of Ken Berry and California Citizens for Environmental Justice
<b>POPULAR NAME [if applicable]</b>	Review of Cleanup and Abatement Order No. R2-2008-0095 for City of Richmond, U.S. Department of Defense, Department of the Navy, Former Point Molate Naval Fuel Depot
<b>REGIONAL BOARD</b>	San Francisco Bay Regional Water Quality Control Board
<b>FILE NO[S]</b>	SWRCB/OCC File A-1972

### PRECEDENTIAL DECISION

On November 12, 2008, the San Francisco Bay Regional Water Quality Control Board (San Francisco Bay Water Board) issued Cleanup and Abatement Order (CAO) No. R2-2008-0095 to the City of Richmond and the United States Department of Defense, Department of the Navy concerning the Point Molate Naval Fuel Depot (Site). The Site is a former Navy facility adjacent to San Francisco Bay in the City of Richmond and is comprised of approximately 413 acres. Residual contamination from former military operations has been found at concentrations that necessitate remedies involving a combination of source removal, groundwater monitoring, and adoption of institutional controls to assure that the cleanup is consistent with the intended reuses of the Site and protective of human health and the environment. The CAO requires the submission of a number of studies, plans, and reports, but does not require any specific cleanup actions.

Mr. Ken Berry and California Citizens for Environmental Justice (Petitioners) filed a timely petition requesting review by the State Water Resources Control Board. The Petitioners' sole contention is that the San Francisco Bay Water Board failed to comply with the requirements of the California Environmental Quality Act (CEQA). The San Francisco Bay Water Board found that the adoption of the CAO was "categorically exempt" from the requirements of CEQA. The Petitioners claim that the use of a categorical exemption is unlawful because CEQA prohibits the use of categorical exemptions for projects that take place on sites included on the Cortese List.

The Order agrees with the Petitioners' claim and it vacates the CAO and remands the matter to the San Francisco Bay Water Board. The Order notes that while the Site's placement on the Cortese List precludes the use of categorical exemptions, it does not preclude the use of other exemptions or the preparation of environmental documents. Upon remand, the San Francisco Bay Water Board may determine that the CAO's adoption is eligible for a statutory exemption, may prepare an environmental document, or may determine that the CAO's adoption qualifies for CEQA's common sense exception.

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09-23-09 / revised 09-30-09

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